

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

In re:)
JAMES F. MCAULIFFE,) CHAPTER 7
Debtor.) CASE NO. 16-11089-MSH

JOHN O. DESMOND, CHAPTER 7)
TRUSTEE FOR THE ESTATE OF)
JAMES F. MCAULIFFE)
Plaintiff,) ADVERSARY PROCEEDING
v.) NO. 16-01164-MSH
ROBIN S. GILBERT,)
Defendant.)

JOINT MOTION TO AMEND THE DISCOVERY PLAN

The plaintiff John O. Desmond, the duly appointed Chapter 7 Trustee (the “Trustee”) for the bankruptcy estate of James F. McAuliffe. (the “Debtor”) and the Defendant, Robin S. Gilbert (the “Defendant”) (collectively the “Parties”) hereby move to amend the Parties’ Court-approved Discovery Plan in this case for the purpose of extending all current deadlines set forth therein by sixty (60) days.

In support of this Motion, the Parties state as follows:

1. On March 28, 2016, the Debtor filed a voluntary petition pursuant to Chapter 7 of the Bankruptcy Code.
2. On March 29, 2016, the Trustee was appointed as the Chapter 7 trustee of the Debtor’s bankruptcy estate.

3. On September 15, 2016, the Trustee filed an adversary complaint against Robin S. Gilbert pursuant to Section 363(h) of the Bankruptcy Code and Rule 7001(3) of the Federal Rules of Bankruptcy Procedure (the “Adversary Complaint”).

4. On October 31, 2016, the Court issued a Pretrial Order (the “Pretrial Order”).

5. The Pretrial Order set the deadline for the completion of fact discovery for January 27, 2017.

6. On November 21, 2016, the Parties held a Rule 26(f) Conference to discuss matters set forth in the Pretrial Order.

7. On November 30, 2016, the parties filed a Joint Motion to Approve Extension of Discovery Deadline and Proposed Discovery Plan and Rule 26(f) Certification (the “Discovery Plan”).

8. On December 1, 2016, the Court allowed the Joint Motion to Approve Extension of Discovery Deadline and Discovery Plan.

9. Since filing the Discovery Plan the Parties have begun to engage in settlement discussions to resolve the claims asserted in the Complaint.

10. The parties are seeking to amend the Discovery Plan by extending the deadlines contained therein by sixty (60) days to provide them additional time to continue their settlement discussions without the need of proceeding with discovery.

11. The Parties state that the requested changes to the Discovery Plan will not prejudice any party, nor will it result in any added burden on the Court.

WHEREFORE, John O. Desmond, the Chapter 7 Trustee, and Robin S. Gilbert respectfully request that this honorable Court enter an order (i) allowing the Joint Motion to

Amend the Discovery Plan to extend all current deadlines in the Discovery Plan by 60 days; and
(ii) granting any such further relief as is just and proper.

Respectfully submitted,

**JOHN O. DESMOND, CHAPTER 7 TRUSTEE
OF THE ESTATE OF JAMES. F. MCAULIFFE**

By his attorneys,

/s/ Anthony R. Leone

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Dated: February 15, 2017

ROBIN S. GILBERT

By her attorney,

/s/ Gary W. Cruickshank

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Dated: February 15, 2017

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CERTIFICATE OF SERVICE

I, Anthony R. Leone, of Murtha Cullina LLP, do hereby certify that on the 15th day of February, 2017, I served a copy of the within ***Joint Motion to Amend the Discovery Plan*** through the ECF system to registered participants.

/s/Anthony R. Leone
Anthony R. Leone